

*United States Court of Appeals  
for the Second Circuit*



**APPELLANT'S  
BRIEF**



15-6107

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

75-6107

SIDNEY DANIELSON, Regional Director, Region 2  
of the National Labor Relations Board, for  
and on behalf of the NATIONAL LABOR RELATIONS BOARD,

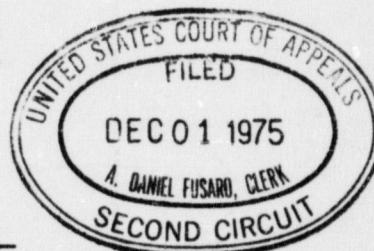
Petitioner,

v.

FUR DRESSERS, LOCAL NO. 2F, AMALGAMATED MEAT CUTTERS  
AND BUTCHERS WORKMEN OF NORTH AMERICA, AFL-CIO: and  
FUR FLOORWORKERS UNION, LOCAL NO. 3F, AMALGAMATED  
MEAT CUTTERS AND BUTCHERS WORKMEN OF NORTH AMERICA,  
AFL-CIO: and JOINT BOARD OF FUR LEATHER AND MACHINE  
WORKERS, AMALGAMATED WORKMEN OF NORTH AMERICA, AFL-CIO,

Respondents.

ON APPEAL FROM AN ORDER OF THE  
UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK



BRIEF FOR PETITIONER-APPELLANT

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UNITED STATES COURT OF APPEALS  
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75-6107

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SIDNEY DANIELSON, Regional Director, Region 2  
of the National Labor Relations Board, for  
and on behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

FUR DRESSERS, LOCAL NO. 2F, AMALGAMATED MEAT CUTTERS  
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FUR FLOORWORKERS UNION, LOCAL NO. 3F, AMALGAMATED  
MEAT CUTTERS AND BUTCHERS WORKMEN OF NORTH AMERICA,  
AFL-CIO: and JOINT BOARD OF FUR LEATHER AND MACHINE  
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ON APPEAL FROM AN ORDER OF THE  
UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK

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BRIEF FOR PETITIONER-APPELLANT

I. STATEMENT OF THE ISSUES

1. Whether the district court committed reversible error by determining  
the merits of the unfair labor practice underlying the Board's petition for  
injunctive relief rather than merely deciding whether there was reasonable  
cause to believe that the Union was violating the Act as alleged.

2. Whether the evidence establishes reasonable cause to believe the  
Unions are violating Section 8(b)(4)(ii)(B) of the Act.

3. Whether there is reasonable cause to believe the Board has jurisdiction over the controversy.

II. STATEMENT OF THE CASE

This is an appeal from an order of the United States District Court for the Southern District of New York per Honorable Kevin Duffy denying a petition for a temporary injunction under Section 10(1) of the National Labor Relations Act, as amended (61 Stat. 199, 73 Stat. 544, 29 U.S.C. Section 160(1) ("the Act"), filed on behalf of the National Labor Relations Board ("the Board") by Sidney Danielson, Regional Director of the Second Region of the Board (the "Regional Director"), petitioner-appellant herein. The order of the court below was entered on October 3, 1975 predicated upon findings of fact and conclusions of law contained therein (A. 135-141 ).  
1/  
Notice of Appeal was filed on October 15, 1975. Jurisdiction of this Court is invoked under Sections 1291 and 1292 of Title 28 of the United States Code.

A. The Proceedings Below

The petition for an injunction filed with the district court on July 16, 1975 was based on a charge and an amended charge filed with the Board's Regional Director on May 13 and July 10, 1975, respectively, by South American Fur and Skin Co., Inc. (hereinafter referred to as "South American"), alleging that Respondents-Appellees Fur Dressers Local 2F and 3F, Amalgamated Meat Cutters and Butchers Workmen of North America, AFL-CIO, and the Joint Board of Fur Leather & Machine Workers, Amalgamated Meat Cutters and Butchers Workmen of North America, AFL-CIO (hereinafter individually referred to as "Locals 2F and 3F" and the "Joint Board," respectively, and collectively as "the Unions") were engaging in acts and conduct in violation of Section 8(b)(4)(ii)(B) of the

1/ "A." references are to the Joint Appendix accompanying the briefs.

Act. In pertinent part, this Section of the Act makes it an unfair labor practice for a labor organization to threaten, coerce, or restrain any person engaged in commerce where an object of that conduct is to force or require any person to cease doing business with any other person.

After investigation of the charges, the Regional Director concluded that there was reasonable cause to believe that the Unions were engaging in the unfair labor practices charged and that a complaint should issue.<sup>2/</sup>

Accordingly, the Regional Director, as required by Section 10(1) of the Act, filed with the district court a petition for injunctive relief pending disposition by the Board of the unfair labor practice charges. The Unions filed an Answer in substance denying the allegations of the petition and, on August 27 and September 2, 1975, the court conducted an evidentiary hearing at which all parties participated.

#### B. The Unions' Threats and Picketing Against South American

The facts as found by the district court were substantially uncontested and may be summarized as follows:<sup>3/</sup>

South American, which was incorporated in New York in April, 1975, and began doing business on about April 18 or 19, engages exclusively in the business of importing furs from Argentina and wholesaling them to domestic manufacturers (A. 136; 56, 57, 107). It does not sell its furs directly to the consuming public (A. 56, 107). It is a "store front operation," and Philip Fabrykant, its president, is its only employee (A. 136; 59). Consequently, South American has no labor agreement with any union (A. 59).

<sup>2/</sup> The complaint was issued on July 29, 1975 (Board Case No. 2-CC-1368), and a hearing was held before Administrative Law Judge Arthur Leff on September 4, 1975. Judge Leff issued his decision and recommended order on November 18, 1975, concluding that the violations occurred substantially as alleged. Copies of this decision previously have been submitted to the Court.

<sup>3/</sup> In the recitation of the facts below, references preceding a semicolon are to the district court's findings of fact; those following are to the supporting evidence.

The sole source of South American's imports is an Argentine company called Southern Skin Trading Corp. (hereinafter "Southern Skin") (A. 136;56,57 ). Pursuant to an embargo instituted by Argentina in the summer of 1973, at least eighty percent of all furs exported from Argentina must be "dressed" in Argentina prior to export; only twenty percent may be "raw," or unprocessed skins (A.136;53,57,101,120 <sup>4/</sup> ). Since beginning operations, South American has imported approximately \$60,000 to \$70,000 of skins, of which eighty percent was already processed in Argentina in accordance with Argentine law (A. 136,57 ).

During the week of April 21, the first full week of South American's operations, Henry Foner, president of the Joint Board, entered South American's premises accompanied by another man, Montaugh, and approached Fabrykant in the latter's office (A. 136-137,59 ). Foner warned that Fabrykant would "have a problem" because he was importing dressed skins instead of having his skins processed by American workers. Fabrykant informed Foner of the Argentine embargo on the export of raw skins. Foner asserted that in order to avoid a conflict with the Joint Board, Fabrykant nevertheless would have to import all raw skins. Fabrykant observed that he could do that only by smuggling in the raw skins. Foner replied "that's your problem; just give us raw skins" (A. 137;60,78 ).

About April 30, Jack Mazin, an organizer for Local 2F, entered South American and warned Fabrykant that he would "get himself in trouble by bringing in dressed merchandise." Fabrykant explained the situation and informed Mazin that he had already spoken to Foner about it and would tell Foner of any

4/ "Dressing" skins is the process by which the furs are stripped from the animal's flesh, washed with chemicals, tanned, put through a drying process, and "drummed," or "fluffed-out," all of which make the furs more attractive and readily manufacturable into garments. Prior to the imposition by Argentina of its embargo, American fur dealers could import raw skins which would then be dressed by American workers (A. 137;53,57,121,125 ).

developments (A. 137;61 ). Mazin responded that he would make sure that the manufacturers to whom Fabrykant sold his dressed skins would complain about their quality and return them (A. 61 ).

On about May 5 Foner again entered Fabrykant's shop, this time accompanied by Si Sabin and Paul Catani, representatives of Locals 2F and 3F, respectively. Foner told Fabrykant that they were prepared to picket him if he did not refrain from bringing in dressed merchandise. Fabrykant again explained the effect of the Argentine embargo. He repeated that he wanted no conflict with the Unions and offered to ship his skins to Union firms for further dressing operations. <sup>5/</sup> The Union representatives agreed to this proposal, but only on the condition that Fabrykant pay the full price of dressing the skins as though they were raw. Fabrykant observed that this would put him out of business. Foner replied "That's just what we'll have to do, put you out of business." (A. 137;61,62,63 ).

On Thursday, May 8, a single picket from the Joint Board appeared in front of South American's store carrying a placard reading (A. 137;64 ):

Please Save Our Jobs

Don't Buy Argentine-Dressed Fur Skins

Sold by South American Fur & Skin Company

Local 2F and 3F, Joint Board, AMC

This is an appeal to consumers and customers,  
and not to employees

Thereafter, the number of pickets patrolling in front of South American varied from 2 to 10. Members of Locals 2F and 3F participated in the picketing, which was conducted from 8:30 a.m. to 5:00 or 6:00 p.m. daily (A. 64,65 ).

5/ Skins processed in Argentina need additional work to be acceptable to American manufacturers of fur garments (A. 58 ).

On May 9 Fabrykant entered into an initial oral agreement with Mirode, a New Jersey company, to pick up and reprocess South American's dressed furs (A. 136; 58). <sup>6/</sup> About 11 a.m. a Mirode truck arrived at South American's store (A. 137; 66). Local 2F representative Mazin, who was frequently present at the picket line, recognizing Mirode president Mainwald, "charged into the store," and warned Fabrykant "don't give the skins to Mr. Mainwald, you'll never see him again" (A. 137; 66, 67). <sup>7/</sup> Fabrykant asked Mazin to leave the store. Mazin refused, and, when Mirode employees began removing furs from the store, Mazin blocked their exit. Mazin told Fabrykant "don't give him the furs, you'll be a dead man in the market, you'll never see the skins again. You don't know what you are doing. You are really causing trouble with yourself, with us, the Union." Fabrykant ordered Mazin out of the store and he left. Mirode's employees then loaded about 3,500 furs into the truck and drove off (A. 137; 67). Local 3F representative Catani then barged into the store and told Fabrykant "you are a dead man in this market for giving the skins to this man" (A. 68).

On the morning of May 12, there were 5 pickets present at South American (A. 68). At about 10 or 11 a.m., the Mirode truck drove up to return redressed furs (A. 137; 69). About 20 people, led by Mr. Mazin, converged on the truck and began banging on it with their fists. The Mirode employees were jostled by the mob, but with a police escort they were able to bring the furs into the store. Mazin told Fabrykant "you see what you did. You are a dead man in the market. Look what you caused" (A. 73, 74). As Mirode's president, Mainwald, left the store, Catani punched him in the face. Thereafter a

6/ South American does not dress the raw skins it imports, but has not yet sold them to manufacturers or other dealers who might have them dressed or dyed (A. 105).

7/ The Unions apparently had a long standing dispute with Mirode (A. 136, 14-15, 58-59).

group of about 20 people walked in a circle in front of South American cursing and spitting at the window. Fabrykant then closed the store to avoid more trouble (A. 75 ).

8/

After May 12, the number of pickets at South American's premises decreased to four and thereafter was further decreased to 2 or 3 (A. 64,65,66 ). The picketing continued uninterrupted on a daily basis until July 20, when it was temporarily suspended (A. 66 ). The picketing has since resumed and is continuing to date ( See attached affidavit of Fabrykant ).

In late July or early August, a picket stopped a driver for Calderon Trucking Company, and told him not to make any deliveries to South American. The driver asked whether the pickets were on strike, and upon being informed they were not, he proceeded to make his delivery (A. 102, 103, 104 ).

#### C. The District Court's Findings, Conclusions and Order Denying Injunctive Relief

Despite finding that the facts had occurred substantially as alleged, the district court denied the Section 10(l) petition. Upon a "meaningful examination of the merits" of the case (A. 138 ), the district court had "serious doubts as to whether or not a labor dispute of any sort is in fact present in this case" (A. 138 ). "To the extent that a labor dispute does exist," the court was convinced that "the dispute is with South American, the company being picketed" (A. 140 ). Hence, the court concluded, "either no labor dispute exists in which case . . . [the Board's] jurisdiction is lacking and the picketing is protected by the First Amendment, or a labor dispute exists in which South American is the primary rather than a neutral

8/ The remainder of South American's skins were returned by Mirode on July 6, apparently without incident (A. 97 ). At the hearing below the Unions agreed to the issuance of an injunction against any violence and all picketing or other interferences with pick-ups and deliveries by Mirode (A. 69-71 ). No such injunction was ever entered (A. 141, 71).

9/ The picketing was suspended on July 20 as part of an agreement under which the hearing below was postponed to permit the Unions to take depositions (A. 66 ).

target and therefore the picketing is protected by the primary picketing proviso of Section 8(b)(4)(ii)(B)" (A. 140, 141 ).

We show below that the district court committed reversible error in three respects: (1) it applied an erroneous standard by making and acting upon its own conclusions on the merits of the underlying unfair labor practice charge; (2) it was mistaken as to the law in determining that the existence of a "labor dispute" is essential to the Board's jurisdiction; and (3) it was clearly erroneous in determining that if a labor dispute existed, South American was the primary party to the dispute and that the Unions' picketing was therefore lawful, primary activity.

#### ARGUMENT

##### I. THE STATUTORY SCHEME PURSUANT TO WHICH INJUNCTIVE RELIEF WAS SOUGHT: THE APPLICABLE STANDARDS

10/

Section 10(1) of the Act empowers district courts to grant "just and proper" injunctive relief pending the Board's resolution of unfair labor practice charges made subject to its provisions. In brief, Section 10(1) embodies the

10/ Insofar as is pertinent, Section 10(1) provides as follows: Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph 4(A), (B), or (C) of Section 8(b) or Section 8(e) or Section 8(b)(7), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: Provided further, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the Charging Party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: \* \* \*. Upon

(Continued)

determination of Congress that certain unfair labor practices, most notably, secondary boycotts, give or tend to give rise to such serious interruptions to commerce as to require their discontinuance, pending adjudication by the Board on the merits, to avoid irreparable injury to the policies of the Act and the frustration of the statutory purpose which otherwise would result. See, S. Rep. No. 105, 80th Cong., 1st. Sess., pp. 8, 27, I Legislative History of the LMRA, 1947 (G.P.O., 1948)(hereinafter referred to as "Leg. Hist.") 414, 433, a portion of which is reproduced in Danielson v. Joint Board of Coat, Suit & Allied Garment Workers Union, 494 F.2d 1230, at 1241-1242 (C.A. 2, 1974). See also Schauffler v. Local 1291, International Longshoremen's Association, 292 F.2d 182, 187 (C.A. 3, 1961); Retail Clerks v. Food Employers Council, Inc., 351 F.2d 525 (C.A. 9, 1965); Consentino v. United Brotherhood of Carpenters, 265 F.2d 327 (C.A. 7, 1959). Therefore, Congress imposed a mandatory duty upon the Board's Regional Director to seek injunctive relief in the appropriate district court if, upon investigation of the charge, he has reasonable cause to believe that a violation has occurred.

Since the injunction proceeding under Section 10(1) of the Act is ancillary to the main unfair labor practice case, and since any injunction issued thereunder is interlocutory in nature and expires upon the Board's rendering its final decision, the district court is called upon only to

10/ filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the Charging Party, shall be given an opportunity to appear by counsel and present any relevant testimony: Provided further, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. \* \* \*

determine whether there is "reasonable cause to believe" a violation of the Act has occurred. See Seeler v. Trading Port, Inc., 517 F.2d 33, 36 (C.A. 2, 1975), and cases there cited. <sup>11/</sup> This "reasonable cause" standard does not require the Board to adduce evidence to the extent required for enforcement of a Board order after a full hearing on the merits, nor need the legal propositions advanced by the Board be finally established. As the Seventh Circuit has stated, Madden v. Hod Carriers' Local 41, 277 F.2d 688, 692 (1960), cert. denied, 364 U.S. 836, "the evidence need not establish a violation. It is sufficient . . . if there be any evidence which together with all the reasonable inferences that might be drawn therefrom supports a conclusion that there is reasonable cause to believe that a violation has occurred." Accord: Seeler v. Trading Port, Inc., supra, 517 F.2d at 37; Danielson v. Joint Board, supra, 494 F.2d at 1245; Douds v. Milk Drivers & Dairy Employees Union, 248 F.2d 534, 537 (C.A. 2, 1957). And, in this Circuit, the district court's determination whether there has been a showing of reasonable cause "is a question of law subject to full appellate review." Danielson v. Joint Board, supra, 494 F.2d at 1244. <sup>12/</sup>

11/ Trading Port arose out of a Section 10(j) proceeding, under which the Board is empowered to seek injunctive relief in all types of unfair labor practice cases not covered by Section 10(1). However, as this Court observed, 517 F.2d at 36, n. 5, in this Circuit, "the district court should apply the same standards in Section 10(1) cases as it does in Section 10(j) cases." See Danielson v. Joint Board, supra, 494 F.2d at 1242.

12/ While other circuits apply a "clearly erroneous" test in reviewing injunction orders based on a finding that reasonable cause was established, because of the Congressional policy favoring the granting of Section 10(1) injunctions, the scope of review is not so limited when an injunction is denied. Wilson v. Milk Drivers & Dairy Employees Union, 491 F.2d 200, 203-204 (C.A. 8, 1974); Boire v. International Brotherhood of Teamsters, 479 F.2d 778, 779, n. 15 (C.A. 5, 1973); Local 83, Construction Drivers v. Jenkins, 308 F.2d 516, 517, n. 1 (C.A. 9, 1962).

While, in disagreement with other courts of appeals, this Court held in Danielson v. Joint Board, supra, that the "reasonable cause" standard requires a showing of "at least some significant possibility that the Board will enter an enforceable order," 494 F.2d at 1244, and that in cases involving novel legal theories, the district court should not issue an injunction if, "after full study, the district court is convinced that the General Counsel's legal position is wrong," <sup>13/</sup> Id., at 1245, it is clear that the Court did not intend to depart from the otherwise settled rule in this and other circuits that "the Board, rather than the district courts, remains the 'primary fact finder' and 'primary interpreter of the statutory scheme,' subject to judicial review by a court of appeals pursuant to Sections 10(e) and (f)."  
McLeod v. National Maritime Union of America, AFL-CIO, 457 F.2d 490, 494 (C.A. 2, 1972); McLeod v. National Maritime Union of America and Commerce Tankers Corp., 457 F.2d 1127, 1133 (C.A. 2, 1972). See also, N.L.R.B. v. Denver Building and Construction Trades Council, 341 U.S. 685, 681-693 (1951); San Francisco-Oakland Newspaper Guild v. Kennedy, 412 F.2d 541, 544-545 (C.A. 8, 1969); Squillacote v. Graphic Arts Int'l. Union Local 277, 513 F.2d 1017, 1021 (C.A. 7, 1975). Nor did the Court issue an open invitation to the district courts to make independent determinations of what the law should be. Rather, the decisions of this Court make it clear that mere disagreement by the district court with the Board's position, or even outstanding judicial decisions which are adverse to that position, do not alone negate "reasonable cause." McLeod v. National Maritime Union and Commerce Tankers Corp., supra, 475 F.2d at 1137-1138, cited with approval in Seeler v. Trading

<sup>13/</sup> As this Court recognized, the standard generally applied is that the Regional Director's factual allegations and propositions of law must not be "insubstantial and frivolous." 494 F.2d at 1239-1240.

Port, supra, 517 F.2d at 36; Kaynard v. Independent Routemen's Association, 479 F.2d 1070, 1072 (C.A. 2, 1973); McLeod v. A.F.T.R.A., 234 F. Supp. 832, 838 (D.C. S.D.N.Y., 1964), aff'd., 351 F.2d 310 (C.A. 2, 1965). Indeed, the court in Danielson v. Joint Board specifically warned (494 F.2d at 1245):

Prospective picketers should not take our decision here as saying more than it does. When "reasonable cause to believe" turns on disputed issues of fact, the Regional Director may assume these in favor of the charge and the district court should sustain him if his choice is within the range of rationality. If differing inferences may fairly be drawn from the facts he has found, he may choose the one more favorable to the charging party, and this too should be upheld. Even on an issue of law, the district court should be hospitable to the views of the General Counsel, however novel.

Thus, the Danielson decision must be read in the context in which it was rendered -- a case in which this Court characterized the theory of violation advanced by the Regional Director as being "a new adventure . . . in the interpretation of a statute fourteen years after it had come on the books", 494 F.2d at 1245, an "effort to stretch" the prohibitions of Section 8(b)(7)(C) so far that even if the Board were to find a violation of the Act, "the order would not be enforced unless some new facts or legal theories should appear." *Id.*, at 1237, 1239.

This case, unlike the Danielson proceeding, did not involve any "new adventures" by the Regional Director, nor did it involve a "stretching" of the proscriptions of Section 8(b)(4)(B) of the Act. It required only the application of settled propositions of law to a factual situation which the court below found to be essentially as alleged. In these circumstances we submit that the court below did not apply the appropriate limitations upon the scope of its inquiry in Section 10(1) proceedings. Instead, the district court undertook a "meaningful examination of the merits" of the case (A. 138 ), and improperly based its decision on its "conviction"

that no violation had been established. Moreover, despite this Court's admonition, the court below was not "hospitable to the views of the General Counsel," but instead rejected them in favor of a holding by the Fourth Circuit rendered in 1964 and never followed thereafter by any court of appeals. Finally, as we show, infra, the court misapplied the established law to the uncontested facts.

II. THE COURT BELOW ERRED IN FAILING TO FIND THAT THERE WAS REASONABLE CAUSE TO BELIEVE THAT THE UNIONS' PICKETING WAS VIOLATIVE OF SECTION 8(b)(4)(ii)(B) OF THE ACT

Section 8(b)(4) of the Act makes it an unfair labor practice for a union or its agents --

(ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where . . . an object thereof is:

\* \* \* \*

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, . . ." Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing.

Section 8(b)(4)(B) of the Act implements the "dual congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own." N.L.R.B. v. Denver Bldg. & Constr. Trades Council, supra, 341 U.S. at 692; National Woodwork Manufacturers Ass'n. v. N.L.R.B., 386 U.S. 612, 620-627 (1967). Thus, Section 8(b)(4)(B) does not prohibit a union from taking traditional primary action, including picketing, against an employer in furtherance of a dispute with that employer. However, Section 8(b)(4)(B) does proscribe

a union's picketing or threatens to picket an employer with whom it has no dispute regarding its labor relations for an object of forcing the neutral employer to cease doing business with any other person, or with an object of causing other persons to cease doing business with the picketed employer.

To paraphrase the Supreme Court's explanation of the primary -- secondary dichotomy in National Woodwork Mfg. Ass'n. v. N.L.R.B., supra, 386 U.S. at 544-545, the "touchstone" is whether the union's concern is with the labor relations of the employer against whom its pressures are directed vis-a-vis his own employees (primary, protected activity) or whether the activity is "tactically calculated to satisfy union objectives elsewhere" (prohibited secondary activity).

Under this test, it is manifest that the Unions' picketing and threats to picket South American fell within the plain proscriptions of Section 8(b)(4)(B) of the Act. The Unions had no dispute, nor could they have a dispute, with South American concerning its labor relations vis-a-vis its own employees, for South American had no employees other than its president, Fabrykant, and did not even perform any of the work with which the Unions were concerned -- the dressing of raw skins. As the Unions made clear to Fabrykant (See supra, pp. 4-6 ) and reiterated throughout the hearing (A.17-19,21,23,35,120,127 ), their concern was with the loss of fur dressing work available to employees of those domestic employers in the industry who do perform such work, a loss which the Unions feared would be aggravated by South American's importation of pre-dressed furs. Plainly, then, the Unions' conduct against South American was "calculated to satisfy the [Unions'] objectives elsewhere" -- increasing the opportunities for fur dressing work for their members employed by other employers. Thus, contrary to the conclusion of the court below (A. 140 ), South American was not a primary

employer in any dispute with the Union within the meaning of Section 8(b)(4)(B) of the Act. See National Woodwork Manufacturers Ass'n. v. N.L.R.B., supra.

14/ It is equally clear that at least an object of the Unions' conduct was for the proscribed purpose of "forcing or coercing" South American to "cease . . . selling . . . or otherwise dealing in the products of" Southern Skin, and to cause fur garment manufacturers to cease doing business with South American. Thus, as shown above, p. 4, South American's sole source of furs was Southern Skin, an Argentine company bound by Argentine law to export at least 80 percent of its furs pre-dressed. Hence, South American could satisfy the Unions' demands that it import exclusively raw skins only by terminating its business relations with Southern Skin and finding a new exporter of furs who is either outside the reach of Argentina's embargo or who is willing to smuggle raw skins out of Argentina in violation of that embargo. 16/ That this would necessitate South American to "cease doing business" with Southern Skin within the intendment of Section 8(b)(4)(B) can hardly be denied.

Similarly the record reflects that the picketing has an additional, immediate object the inducement of fur garment manufacturers to cease trading with South American. As shown above, supra, p. 5, the Unions' picket signs

14/ It is well settled that the prohibited object of a union's conduct need not be the sole object to be violative of Section 8(b)(4), so long as it is an object. See N.L.R.B. v. Denver Bldg. & Constr. Trades Council, supra, 341 U.S. at 688-689; International Brotherhood of Electrical Workers, Local 501 v. N.L.R.B., 341 U.S. 694, 700 (1951). Accord: Bedding, Curtain & Drapery Workers Union Local 140, 390 F.2d 495, 499-500 (C.A. 2, 1968), cert. denied 392 U.S. 905 (1968), and cases there cited.

15/ The legislative history of subparagraph (ii) of Section 8(b)(4) shows that by the use of the phrase "threaten, coerce or restrain" Congress intended both to foreclose threats of "labor trouble or other consequences" (105 Cong. Rec. 15552, II Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, G.P.O., 1959)), and to prohibit the carrying out of such threats by picketing. International Brotherhood of Electrical Workers v. N.L.R.B., 341 U.S. 694, 703-704 (1951).

16/ Obviously, the Unions' suggestion that South American contract with domestic skin dressers and dyers employing members of the Unions for the redressing of the dressed furs at the costs applicable to raw skins, was not a viable alternative.

expressly appeal to "consumers and customers" not to buy South American's Argentine-dressed furs. Since South American is a wholesaler, and does not sell directly to the consuming public, the Unions' boycott appeal can only be directed to the garment manufacturers, South American's only customers. Obviously, picketing a wholesaler to cause its customers to refrain from buying its merchandise is tantamount to requesting them to cease doing business with the wholesaler.

However, pointing to the language of their picket legends, -- "Don't Buy Argentine-Dressed Fur Skins Sold by South American" -- the Unions contended below that their picketing did not constitute a secondary boycott of South American, but rather was only in furtherance of a consumer boycott of the primary product -- Argentine-dressed skins -- and protected under the Supreme Court's holding in N.L.R.B. v. Fruit and Vegetable Packers & Warehousemen, Local 760 (Tree Fruits), 377 U.S. 58 (1964). This argument is unavailing.

In Tree Fruits, a union had a dispute with fruit packers selling Washington State apples. The union picketed at a Safeway supermarket which carried, as one of its many items of food products, the Washington State apples involved in the union's dispute. The union advised Safeway prior to the commencement of the picketing that the picketing was only an appeal to the public not to buy the "struck" apples and that the pickets would refrain from any action inconsistent with such a limited objective. 377 U.S. at 60-61, 73-76. And in fact, the picketing was so confined, no pick-ups or deliveries were interfered with, ingress and egress to the store was unobstructed, and there was no record evidence that the picketing was designed or intended to cause economic injury to Safeway's entire business. Id., at 61. In this factual context, the Supreme Court held that although the picketing did expand

the site of the appeal to a secondary premises, it did not threaten, coerce or restrain the secondary employer, Safeway, within the meaning of Section 8(b)(4)(ii) of the Act. *Id.*, at 71.

However, the Court was careful to delimit its holding to "peaceful consumer picketing . . . which only persuades the secondary employer's customers not to buy the struck product," which, the Court held, is "poles apart" from such picketing intended "to shut off all trade with the secondary employer unless he aids the union in its dispute with the primary employer . . .,"<sup>17/</sup> conduct plainly barred by Section 8(b)(4)(B). 377 U.S. at 70-71.

In the latter situation, the Court observed, the secondary employer "stops buying the struck product, not because of a falling demand, but in response to pressure designed to inflict injury on his business generally. In such case, the union does more than merely follow the struck product; it creates a separate dispute with the secondary employer." *Id.*, at 72.

Apart from the obvious distinction that South American, unlike the Safeway supermarket, is a wholesale operation which does not sell its merchandise to the ultimate consumer,<sup>18/</sup> the record in this case demonstrates at least reasonable cause to believe that the Union's picketing was not limited in

17/ Throughout its opinion, the Court contrasted consumer picketing which does no more than follow a particular struck product with consumer picketing designed to inflict injury on the secondary employer's business generally (377 U.S. at 63, 70-71, 72). By way of illustration, the Court suggested that the viewpoint of a secondary employer, it is one thing if consumer picketing results in a 25 percent decline in the sales of a struck product and quite another if the picketing results in a 25 percent decline in the secondary's entire business (377 U.S. at 72, n. 20). See also, Bedding, Curtain & Drapery Workers Union, Local 140 v. N.L.R.B., 390 F.2d 495, 500 (C.A. 2, 1968), cert. denied, 392 U.S. 905.

18/ While the Supreme Court in Tree Fruits did not specifically limit its holding to product boycotts of retail stores, it is apparent that this was in fact the focus of its attention. Thus, the Court itself repeatedly referred to the picketing under consideration as "appeals to the public" and "consumer picketing" (377 U.S. at 63-64, 66, 67, 68, 69, 71, 72), and the legislative history to which the Court referred in reaching its decision was plainly concerned with picketing at retail establishments (*Id.*, at 68, 70). Moreover, our research has not revealed a single case in which

(Continued)

purpose or effect to a consumer boycott of the Argentine-dressed skins, but instead was part of a deliberate, coercive campaign aimed directly at South American and "designed to inflict injury" on it in order to force it to cease doing business with Southern Skin. Thus, rather than taking careful steps to assure South American that their picketing would be directed only against the primary product and not against South American, as the union did in Tree Fruits, the Unions here engaged in blatant, broad, and clearly coercive threats to picket South American itself. As shown above, pp. 3-4 , on April 21, within days after South American began its business operations, Joint Board representative Foner warned South American president Fabrykant that he would "have a problem" with the Joint Board for importing dressed skins. On April 30, Mazin, a local 2F representative, similarly warned Fabrykant that he would "get himself in trouble by bringing in dressed merchandise," and that Mazin would see to it that manufacturers would return all of South American's furs as unacceptable. And again, on May 5, the Joint Board and Locals 2F and 3F together warned Fabrykant that they would picket him if he did not refrain from bringing in dressed furs. When Fabrykant repeatedly explained that he was without power to comply with the Unions' demands that he import only raw skins and observed that the Unions' alternate suggestion that he have all his furs redressed at full cost would put him out of business, <sup>19/</sup> Foner replied "That's just what we'll have to do, put you out of business."

18/ (Cont'd) Tree Fruits has been urged successfully to privilege product picketing at other than retail type establishments. In fact, in each case where Tree Fruits was relied upon by a union to protect its picketing at a secondary location other than the place of final retail distribution of the struck product to the consuming public, the Tree Fruits argument has been rejected, although not on this ground. See Honolulu Typographical Union No. 37, I.T.U. v. N.L.R.B., 401 F.2d 952, 955-956 (C.A.D.C., 1967); American Bread Co. v. N.L.R.B., 411 F.2d 147, 154 (C.A. 6, 1969); Hoffman v. Cement Masons Union Local 337, 468 F.2d 1187, 1191-1192 (C.A. 9, 1972), cert. denied, 411 U.S. 986.

19/ Not only do these threats against South American belie the Unions' claim that their picketing was simply a product boycott, but the threats themselves were clear violations of the Act. As this Court has made clear, even in (Continued)

Three days later, the picketing of South American commenced.

In further distinction from Tree Fruits, the picketing of South American was not confined to a "peaceful . . . appeal to the public . . . to boycott the primary . . . goods", 377 U.S. at 63, but was attended by further coercive threats and by unlawful interferences with deliveries and with ingress and egress to the store. Thus, as set forth above, pp. 4-6, upon learning that South American had contracted with Mirode for the performance of additional dressing work on its dressed furs, representatives of Locals 2F and 3F confronted Fabrykant and warned him "don't give him the furs, you'll be a dead man in the market . . . You are really causing trouble with yourself, with us, the Union," and Local 2F representative Mazin attempted to block Mirode employees' exit from the store. When Mirode employees subsequently returned with some of the redressed furs, Union pickets and sympathizers led by Mazin converged on the truck and attempted forcibly to prevent it from being unloaded. Thereafter, the Unions picketed South American en masse, blocking the entrance to its store, and causing Fabrykant to close his doors for the day. And, on another occasion, a picket attempted to cause a driver for Calderon Trucking Company to refuse to make a delivery  
20/  
to South American.

19/ (Cont'd) the context of ostensible consumer-picketing against a struck product, "general threats of picketing are unlawful secondary pressure within the meaning of Section 8(b)(4)(ii)(B)." Kaynard v. Independent Routemen's Association, 479 F.2d 1070, 1073 (C.A. 2, 1973), citing N.L.R.B. v. Local 3, IBEW, 467 F.2d 1158, 1160-1161 (C.A. 2, 1972). Accord, N.L.R.B. v. Carpenters Local 180, 462 F.2d 1321, 1323 (C.A. 9, 1972).

20/ Section 8(b)(4)(B) proscribes even unsuccessful inducements of work stoppages. N.L.R.B. v. Associated Musicians, 226 F.2d 900, 904-905 (C.A. 2, 1965), cert. denied, 351 U.S. 962.

In these circumstances, the mere fact that the picket signs may have contained language ostensibly directed to consumers and customers cannot immunize such obvious secondary threats and picketing activity from the proscriptions of the Act. As the Ninth Circuit has aptly stated (N.L.R.B. v. Millmen & Cabinet Makers Union, Local 550, 367 F.2d 953, 955-956 (1966)):

A mere facade of "consumer" picketing cannot foreclose the Board from determining the true purpose of the union's conduct. What in actuality is employee-oriented conduct, or veiled coercion of the secondary employer, cannot by the simple use of the words "consumer directed," be given statutory protection. (Citations omitted.)

Accord: N.L.R.B. v. Building Serving Employees, 376 F.2d 131, 133 (C.A. 1, 1967); Bedding, Curtain & Drapery Workers Union Local 140 v. N.L.R.B., supra, 390 F.2d at 502-503; American Bread Co. v. N.L.R.B., 411 F.2d 147, 154-155 (C.A. 6, 1969).

That the Unions' intention was to "inflict injury on South American's business generally," Tree Fruits, 377 U.S. at 72 -- indeed, that their intention was to "put it out of business," as Foner expressly threatened -- is further substantiated by the fact that the Unions were fully aware that at least 80 percent of South American's furs would be subject to their boycott. The Unions also knew that it was impossible for South American to comply with their demands that it import only raw skins because its sole source of furs was Southern Skin, an Argentine corporation bound by Argentina's embargo on the exportation of raw skins. Thus, the Unions' picketing of South American in support of a boycott against Argentine-dressed furs could only have been calculated to, and predictably would, result in a loss to South American of the vast majority, if not all, of its business in this highly organized industry. This deliberate attempt to eliminate South American from the market

is a far cry from the narrowly limited picketing of but one of Safeway's many food products in Tree Fruits. And, recognizing that "this factual distinction does indeed have significant legal consequences," the Board recently rejected the Tree Fruits defense in a case presenting like circumstances.

The Dow Chemical Company, 211 NLRB No. 59, 86 LRRM 1381, 1383 (1974), petition for review and cross-application for enforcement pending, No. 74-1632 (C.A.D.C.). Cf. Hoffman v. Cement Masons Union Local 337, 468 F.2d 1187, 1191 (C.A. 9, 1972), cert. denied, 411 U.S. 986.

In sum, while it may be that the Unions' ultimate goal of recapturing fur dressing work for their members employed by American employers is a respectable, or even an admirable, aim, there is surely at least a "significant possibility that the Board will enter an enforceable order" (Danielson v. Joint Board, supra, 494 F.2d at 1244) holding that the Unions' chosen means of accomplishing that goal was unlawful under Section 8(b)(4)(ii)(B) of the Act. National Maritime Union of America v. N.L.R.B., 342 F.2d 538, 544-545 (C.A. 2, 1965), cert. denied 382 U.S. 835; Nat'l. Maritime Union of America v. N.L.R.B., 346 F.2d 411, 419 (C.A.D.C., 1965), cert. denied 382 U.S. 840; Amalgamated Meat Cutters, etc. v. N.L.R.B., 237 F.2d 20, 25 (C.A.D.C., 1956). 21/

21/ The Unions' assertion below, and the district court's apparent concern (A. 140, 141), that the issuance of an injunction against the picketing would constitute a deprivation of the Unions' Constitutionally protected right of free speech is also without merit. The Supreme Court long ago put this argument to rest in International Brotherhood of Electrical Workers v. N.L.R.B., 341 U.S. 694, 705 (1951), where it stated:

The prohibition of inducement or encouragement of secondary pressure by Section 8(b)(4)(B) carries no unconstitutional abridgement of free speech. . . . The constitutionality of Section 8(b)(4)(B) is here questioned only as to its possible relation to the freedom of speech guaranteed by the First Amendment. That provision has been sustained by several Courts of Appeals. The substantive evil  
(Continued)

III. THERE IS AT LEAST REASONABLE CAUSE  
TO BELIEVE THE BOARD HAS JURISDICTION  
OVER THE DISPUTE

To the extent that the court below was influenced in its decision by its adoption of the Fourth Circuit's view that "the existence of a 'labor dispute' is the indispensable prerequisite to the Board's jurisdiction," N.L.R.B. v. International Longshoremen's Association, 332 F.2d 992, 996 (1964), (A. 139 ) the court committed reversible error. In the Longshoremen's case, the union refused to refer employees from its hiring hall to stevedoring companies to load ships which had engaged in trade with Cuba during the Cuban missile crisis. In determining that the Board had no jurisdiction over the picketing, the court observed that the union activity "pertained to a general political question" and did not involve "any 'labor dispute' as the statute defines it . . ." 332 F.2d at 95. Significantly, however, the court recognized that it was "dealing with a case of first impression," Ibid., and proceeded to deny enforcement of the Board's order on its merits.

More significant is the fact that the Board initially asserted jurisdiction in the Longshoremen's case, and has never indicated that its position has changed on the basis of the Fourth Circuit's opinion. See, e.g., Twin City Carpenters District Council, 167 NLRB 1017, 1023 (1967), enf. on other grounds, 422 F.2d 309, 312-313 (C.A. 8, 1970). Nor has any other court of appeals adopted the view expressed in Longshoremen's; indeed, as the court

21 Cont'd) condemned by Congress in Section 8(b)(4) is the secondary boycott and we recently have recognized the constitutional right of states to proscribe picketing in furtherance of comparably unlawful objectives. There is no reason why Congress may not do likewise. (Footnotes omitted).

Accord: Bedding, Curtain & Drapery Workers Union Local 140 v. N.L.R.B., supra, 390 F.2d at 503; National Maritime Union of America v. N.L.R.B., supra, 342 F.2d at 546.

below itself observed (A. 139, 140 ), that decision has often been distinguished on its facts, limiting its value as precedent, if any, to the peculiar situation there involved. See National Maritime Union v. N.L.R.B., supra, 342 F.2d at 541-542; N.L.R.B. v. Twin City Carpenter's District Council, supra, 422 F.2d at 312-313; Mountain Navigation Co., Inc. v. Seafarers Int'l. Union of North America, 348 F. Supp. 1398 (D.C.W.D. Wis., 1971). As the District of Columbia Circuit observed in similarly declining to follow the Fourth Circuit's rationale (National Maritime Union v. N.L.R.B., supra, 346 F.2d at 414-415):

Section 2 /of the Act/ does not purport to define the Board's jurisdiction; and the term "labor dispute," which is defined in paragraph (9) /of Section 2/, does not appear at all in the part of the statute with which we are presently concerned, that is to say, Section 8(b)(4)(i) and (ii)(B).

\* \* \* \*

The resolution of that issue was, as the court explicitly recognized, one of "first impression," and no direct authority could be adduced for it. . . . /W/e are not persuaded by the authority of that case to deny the existence of jurisdiction in this one.

But even assuming, arguendo, that the Longshoremen's case is controlling, and that the existence of a "labor dispute" is essential to the Board's jurisdiction, the record below would fully warrant a finding that here, unlike in that case, a "labor dispute" did exist. The "labor dispute" considered essential by the Longshoremen's court was characterized as "a dispute concerning 'terms or conditions of employment.'" 332 F.2d at 996. And, as distinguished from the situation in Longshoremen's, where the union was simply engaging in a political protest completely removed from any concern with employees' working conditions, the Unions' proclaimed object in the instant case was to increase job opportunities for its members, an object

directly relating to their "terms and conditions of employment." See, e.g., Fibreboard Paper Products Corp. v. N.L.R.B., 379 U.S. 203 (1964); National Woodwork Mfgs. Ass'n. v. N.L.R.B., supra, 386 U.S. at 642-643. Such an object, particularly when sought to be obtained through the conduct of a secondary boycott, constitutes a "labor dispute" in the broadest sense of the term, even though the Unions may have no dispute with any primary employer. See, National Maritime Union of America v. N.L.R.B., supra, 342 F.2d at 542; National Maritime Union of America v. N.L.R.B., supra, 346 F.2d at 417-420; N.L.R.B. v. Washington-Oregon Shingle Weavers District Council (Sound Shingle), 211 F.2d 149, 151-152 (C.A. 9, 1954); N.L.R.B. v. Local Union No. 751, United Brotherhood of Carpenters, 285 F.2d 633, 639 (C.A. 9, 1960); N.L.R.B. v. Local 11, United Brotherhood of Carpenters, etc., 242 F.2d 932, 934-935 (C.A. 6, 1951). See also, National Woodwork Mfgs. Ass'n. v. N.L.R.B., supra, 386 U.S. at 645.

In fact, while expressing "serious doubts whether or not a labor dispute of any sort is in fact present here" (A. 138 ) the court below specifically acknowledged that "arguably, the [Unions'] concerns are more work related than political and therefore may well fall within the broad definition of a 'labor dispute'" (A. 140 ). Since the "reasonable cause to believe standard applies to all aspects of a Section 10(1) proceeding, including the jurisdiction of the Board over the controversy, Madden v. International Organization of Masters, Mates & Pilots, 259 F.2d 312, 314 (C.A. 7, 1958); Hoffman v. Retail Clerks Union, Local 648, 422 F.2d 793, 795 (C.A. 9, 1970), the district court's inability to find that the "General Counsel's legal position is wrong" (Danielson v. Joint Board, supra,

494 F.2d at 1245), establishes that the Board's jurisdiction over the picketing was sufficiently demonstrated to support the issuance of an injunction. That is especially true because the proceedings under Section 10(1) are in part designed to maintain the status quo so that any final order which the Board may ultimately issue will not be meaningless or devoid of force, thereby frustrating the remedial purposes of the Act. See the discussion above, pp. 11-13 . See also, McLeod v. National Maritime Union and Commerce Tankers Corp., supra, 457 F.2d at 1138; Squillacote v. Graphic Arts Int'l. Union Local 277, supra, 513 F.2d at 1020-1021, 1023; Cf. United States v. United Mine Workers of America, 330 U.S. 258, 291-292 (1947).

Similarly, the Unions' reliance on American Radio Association, AFL-CIO v. Mobile Steamship Association, 419 U.S. 215 (1974) was misplaced. That case and its progenitors, Benz v. Compania Naviera Hidalgo, 353 U.S. 138 (1957); McCulloch v. Sociedad Nacional Etc., 372 U.S. 10 (1963); Ingres Steamship Co. v. International Maritime Workers Union, 372 U.S. 24 (1963); and Windward Shipping (London) Ltd. v. American Radio Assn., AFL-CIO, 415 U.S. 104 (1974), all involved situations where the union's dispute was with a foreign-flag ship, its picketing was directed against the foreign ship, and the picketing was intended to affect a change in the labor relations of that ship with respect to the bargaining representation or working conditions of its foreign crew. In those circumstances, the Supreme Court held that the union's picketing activity was not "in" or "affecting commerce" within the meaning of the Act, and therefore, was not within the reach of the Board's statutory jurisdiction.

As the Supreme Court stated in American Radio Assn. v. Mobile S.S. Assn., supra, 419 U.S. at 228, those cases stand for the proposition that "Congress did not intend to strain through the filament of the National Labor Relations Act picketing activities which so directly affect the maritime operations of foreign vessels." Thus, the Court held that even the incidental effects on domestic stevedoring companies and shippers of a picket line protesting substandard wages paid to the foreign crew of a foreign-flag ship did not "affect commerce" because "the response of the employees of the American stevedores was a crucial part of the mechanism by which the maritime operations of the foreign ships were to be effected." 419 U.S. at 224. (emphasis added).

It seems clear that this line of cases, all of which were concerned with picketing of foreign flag ship, is not applicable to foreign employers generally. The basis for the Court's conclusion that the Board's jurisdiction does not extend to such controversies was explained in International Longshoremen's Association, Local 1416, AFL-CIO v. Adriadne Shipping Co., Ltd., et al., 397 U.S. 195, 198-199 (1970):

... Board regulation of the labor relations of a foreign ship vis-a-vis its foreign crew/ would necessitate inquiry into the 'internal discipline and order' of a foreign vessel, an intervention thought likely to 'raise considerable disturbances not only in the field of maritime law but in our international relations as well.' \* \* \* Moreover, to construe the Act to embrace disputes involving the 'internal discipline and order' of a foreign ship would be to impute to Congress the highly unlikely intention of departing from 'the well-established rule of international law that the law of the flag state ordinarily governs the internal affairs of a ship,' a principle frequently recognized in treaties with other countries.

Since disputes involving foreign employers in industries other than the operation of maritime vessels would not generally thrust the Board into such a "delicate field of international relations," Benz v. Compania Naviera Hidalgo, supra, 353 U.S. at 147, the underlying rationale for this exclusion from Board jurisdiction would be wholly absent. The Fourth Circuit so held in N.L.R.B. v. International Longshoremen's Association, supra, 332 F.2d at 995. Indeed, in Ariadne, supra, the Supreme Court stated that the "critical inquiry" is whether the dispute involves "the maritime operations of foreign-flag ships," and concluded that a dispute centered on the wages to be paid American workers hired by foreign-flag ships to perform as casual dock work "threatened no interference in the internal affairs of foreign-flag ships likely to lead to conflict with foreign or international law." The Court therefore, invoked the Board's jurisdiction. 397 U.S. at 200-201.

Even assuming, however, that this line of cases may be applicable to foreign employers other than foreign-flag ships, the present case is manifestly outside the ambit of the cited cases. For the Unions' picketing here was not directed at a foreign employer, nor was it in furtherance of a dispute with a foreign employer or intended to affect the labor relations of a foreign employer vis-a-vis its foreign employees. Indeed, the Unions expressly asserted in their Joint Memorandum of Dismissal to the court below that they have "no concern with the labor relations of Southern Skin and no desire to influence them" (A. 33, 113). Rather, the picketing was conducted directly against South American, a domestic corporation, in support of the Unions' goal of increasing the job opportunities of American workers employed by American employers. The courts have long held that the Board does have jurisdiction over such secondary boycotts against domestic corporations, even though the primary dispute is with a foreign employer, e.g., Sound Shingle Co.,

101 NLRB 1159, 1161 (1952), enf., 211 F.2d 149 (C.A. 9, 1954); Madden v. Grain Elevator Workers Local 418, 334 F.2d 1014 (C.A. 7, 1964), cert. denied, 379 U.S. 967; Grain Elevator Workers Local 418 v. N.L.R.B., 376 F.2d 774 (C.A.D.C., 1967), cert. denied, 389 U.S. 932, and, in American Radio Assn. v. Mobile S.S. Assn., supra, the Supreme Court specifically stated that it meant to "cast no doubt on the continued viability of those cases." 419 U.S. at 225, n. 10.

#### CONCLUSION

In view of all of the foregoing, it is respectfully submitted that the court below committed reversible error in failing to conclude that there was reasonable cause to believe that the Unions were violating the Act and that injunctive relief was just and proper. Accordingly, the decision of the court below should be reversed, and the case remanded for the entry of an order granting a temporary injunction as prayed for in the petition to the court below.

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Assistant General Counsel,

JOHN C. MILLER,  
Acting General Counsel,

KAREN SMITH,  
Attorney.

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GERALD BRISSMAN,  
Associate General Counsel.

NOVEMBER, 1975

A F F I D A V I T

STATE OF NEW YORK )  
COUNTY OF NEW YORK )  
CITY OF NEW YORK ) SS.:

PHILIP FABRYKANT, being duly sworn deposes and  
says:

I am the President of South American Fur and Skin Company, Inc., and I maintain my place of business at 204 West 30th Street, in the Borough of Manhattan, City and State of New York.

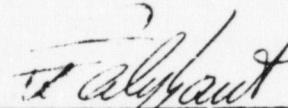
South American Fur and Skin Company, Inc., is a domestic corporation duly organized and existing under the laws of the State of New York and is engaged in importing fur skins from Argentina, South America and selling such skins to fur manufacturers solely on a wholesale basis and is not engaged at the present time nor was it at any time in the past engaged in any retail business or any sales directly to consumers.

The entire business operations of South American Fur and Skin Company, Inc., is seriously disrupted, interfered with and picketed daily by Fur Dressers, Local No. 2F, Amalgamated Meat Cutters and Butchers Workmen of North America, AFL-CIO, Fur Floorworkers Union Local No. 3, Amalgamated Meat Cutters and Butchers Workmen of North America, AFL-CIO, and Joint Board of Fur, Leather and Machine Workers, Amalgamated Meat

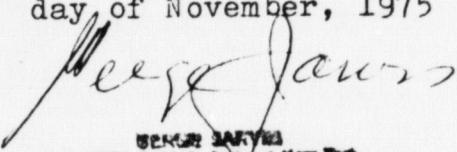
Cutters and Butchers Workmen of North America, AFL-CIO.

That the aforesaid unions have conspired and have organized regular picketing of said business by their members who are parading in front of and are picketing constantly during regular business hours the premises, offices and place of business of South American Fur and Skin Company, Inc., causing to the latter serious and considerable damages until the present time and are seriously interfering with and picketing said business without any justifiable cause or reason.

All of the aforesaid facts are confirmed by me under oath.

  
Philip Fabrykant

Sworn to before me this  
11<sup>th</sup> day of November, 1975

  
GEORGE J. DAVIS  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 32-1474 P.R.D.

County of New York, State of New York  
November 11, 1975

7

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

No. 75-6107

SIDNEY DANIELSON, Regional Director, Region 2  
of the National Labor Relations Board, for and  
on behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner,

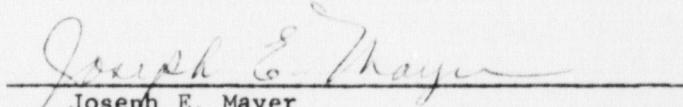
v.

FUR DRESSERS, LOCAL NO. 2F, AMALGAMATED MEAT CUTTERS  
AND BUTCHERS WORKMEN OF NORTH AMERICA, AFL-CIO: and  
FUR FLOORWORKERS UNION, LOCAL NO. 3F, AMALGAMATED MEAT  
CUTTERS AND BUTCHERS WORKMEN OF NORTH AMERICA, AFL-CIO:  
and JOINT BOARD OF FUR LEATHER AND MACHINE WORKERS,  
AMALGAMATED WORKMEN OF NORTH AMERICA, AFL-CIO,

Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 28, 1975,  
two copies of Petitioner-Appellant's brief was duly mailed in a government  
franked envelope to Robert Markewich, Esquire, Markewich, Rosenhaus,  
Markewich & Friedman, P.C., 350 Fifth Avenue, New York, New York 10001,  
attorney for respondent-appellee Locals 2F and 3F, and Harold I. Cammer,  
Esquire, Cammer & Shapiro, P.C., 9 East 40th Street, New York, New York 10016,  
attorney for respondent-appellee Joint Board.

  
\_\_\_\_\_  
Joseph E. Mayer  
Assistant General Counsel

Dated at Washington, D.C.  
this 28th day of November, 1975